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Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,

Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

CRYSTAL D. MEREDITH, CUSTODIAL PARENT AND NEXT FRIEND OF JOSHUA RYAN MCDONALD,

Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF THE CAUCUS FOR STRUCTURAL EQUITY AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

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QUESTIONS PRESENTED

No. 05-908

Whether the District's limited use of a race-based student assignment plan to preserve integration violates the Equal Protection Clause of the Fourteenth Amendment.

No. 05-915

Whether Jefferson County's limited use of a race-based student assignment plan to preserve integration violates the Equal Protection Clause of the Fourteenth Amendment.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

IDENTITY AND INTEREST OF *AMICUS CURIAE*, THE CAUCUS FOR STRUCTURAL EQUITY 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. INTEGRATION IS NECESSARY TO BREAK DOWN RACIAL INEQUALITY, AND RACE-CONSCIOUS MEANS ARE NECESSARY TO ACHIEVE INTEGRATION 3

A. This Court Has Held That Racially Segregated Schools Are Inherently Harmful 3

B. This Court's Decisions In *Brown I*, *Brown II* And Their Progeny Do Not Command An End To All Racial Classifications, But Instead Make Clear That Race-Conscious Means Are Essential To The Elimination of Segregation And The Integration Of Schools 5

C. This Court Has Recognized And Approved The Right And Power Of School Authorities Voluntarily To Desegregate Through Race-Conscious Measures Even In The Absence Of A *De Jure* Constitutional Violation 9

TABLE OF CONTENTS – Continued

Page

II. THE HARM, CAUSES, AND CONSEQUENCES OF SEGREGATION ARE KNOWABLE AND WITHIN THE COGNIZANCE OF LOCAL SCHOOL BOARDS TO ADDRESS 12

A. Local School Boards May Intervene To Disrupt The Processes That Produce Segregation And Cumulative Racialized Disadvantage 12

B. The Harm, Causes, And Consequences Of Segregation Are Known And Specifiable 17

i. Historical Factors Producing Segregation 17

ii. The Historical Legacy and Contemporary Factors Maintaining School Segregation 19

iii. The Impact of Segregated Schools on Students of Color and Society 22

iv. School Segregation, Housing Segregation, and the Cycle of Disadvantage 26

C. Where Racial Harms Are Institutionally Produced, Democratically Elected And Locally Accountable School Districts Are The Most Appropriate Institutional Actor For Responding To School Segregation 28

CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES

Bradley v. Sch. Bd. of City of Richmond, 345 F.2d 310 (4th Cir. 1964), *vacated on other grounds*, 382 U.S. 103 (1965) 6, 28

Briggs v. Elliott, 132 F. Supp. 776 (E.D.S.C. 1955) 6

Brown v. Board of Educ., 347 U.S. 483 (1954) ..... *passim*

Brown v. Board of Educ., 349 U.S. 294 (1955) 9

Bustop v. Bd. of Educ. of the City of Los Angeles, 439 U.S. 1380 (1978) 10

Freeman v. Pitts, 505 U.S. 467 (1992) 28, 29

Gilliam v. Sch. Bd. of Hopewell, 345 F.2d 325 (4th Cir. 1965), *vacated on other grounds*, 382 U.S. 103 (1965) 6

Goss v. Bd. of Educ. of City of Knoxville, Tennessee, 373 U.S. 683 (1963) 6

Green v. County Sch. Bd. of New Kent County, Virginia, 391 U.S. 430 (1968) 9

Grutter v. Bollinger, 539 U.S. 306 (2003) 2, 28

Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988) 28

McDaniel v. Barresi, 402 U.S. 39 (1971) 8

Milliken v. Bradley, 418 U.S. 717 (1974) 29

North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43 (1971) 8, 10

Offermann v. Nitkowski, 248 F. Supp. 129 (W.D.N.Y. 1965) 7

TABLE OF AUTHORITIES

Page

Randall v. Sumpter Sch. Dist. No. 2, 241 F. Supp. 787 (E.D.S.C. 1965) 6

Regents of Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) 2, 10

San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1 (1974) 29

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Taylor v. Bd. of Educ. of City Sch. Dist. of the City of New Rochelle, 191 F. Supp. 181 (S.D.N.Y. 1961) 8

United States v. Jefferson County Bd. of Educ., 372 F.2d 836 (5th Cir. 1966) 7

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RULES AND STATUTES

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Supreme Court Rule 37.6 1

Title IV of the Civil Rights Act of 1964 8

TABLE OF AUTHORITIES

Page

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Page

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Page

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TABLE OF AUTHORITIES

Page

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IDENTITY AND INTEREST OF *AMICUS CURIAE*, THE CAUCUS FOR STRUCTURAL EQUITY

The question presented in these appeals is whether the limited use of race-based student assignment plans to preserve integration in Seattle and Jefferson County is consistent with the Equal Protection Clause of the Fourteenth Amendment. The Caucus for Structural Equity believes strongly that the Constitution does not proscribe race-conscious efforts to promote racial equity in school assignments.

The Caucus is a collaborative of policy oriented nonprofit organizations and legal and social science academics focused on devising strategies to help alleviate persistent racial inequality in the United States.[1] The parties have lodged universal letters of consent with the Clerk of Court for the filing of briefs *Amicus Curiae*. The Caucus and its members offer three important perspectives:

First, they include many leading scholars with expertise in the structural and institutional dynamics underlying persistent racial ex lusion in the United States.

Second, they bring many years of collective experience in formulating policies that promote racial equity.

Third, their work and research give them special insight into the importance of achieving and maintaining desegregation

---

[1] The members of the Caucus include *inter alios* the following: Andrew Barlow (Visiting Professor of Sociology, University of California at Berkeley), Ian Haney López (Professor of Law, University of California at Berkeley), Maya Wiley (Director, Center for Social Inclusion), Philip Tegeler (Executive Director, Poverty & Race Research Action Council), Myron Orfield (Professor, University of Minnesota), Andrew Grant-Thomas (Deputy Director, The Kirwan Institute for the Study of Race and Ethnicity), Eva Jefferson Paterson (Director, The Equal Justice Society), john a. powell (Professor of Law and Executive Director of the Kirwan Institute, The Ohio State University), The Kirwan Institute for the Study of Race and Ethnicity, The Center for Social Inclusion, and The Equal Justice Society.

Pursuant to Supreme Court Rule 37.6, the Caucus for Structural Equity affirms that no counsel for any party authored this brief in whole or in part and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief.

and integration as means of ameliorating the entrenched patterns of marginalization resulting from segregation.

SUMMARY OF ARGUMENT

In *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954), in words that are as true today as they were then, this Court said, "[E]ducation is perhaps the most important function of state and local governments." The Court then held:

> We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. [*Id.*]

This Court concluded "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." 347 U.S. at 494.

This Court's decision in *Brown* marked the constitutional apotheosis of a social truth: racial segregation engenders the marginalization of racial minorities.

The Seattle and Jefferson County school cases present the important question of whether school districts' limited use of race-based student assignment plans to preserve integration violates the Equal Protection Clause of the Fourteenth Amendment. The answer to this question is that these voluntary plans do not. Such a violation can only be found if the words of *Brown* and its progeny are misread to reject race-conscious student assignment *per se* in the absence of *de jure* segregation, as petitioners, their *Amici*, and the Government urge; and if this Court's decisions from *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978), through *Grutter v. Bollinger*, 539 U.S. 306 (2003), are misapplied to prohibit the voluntary desegregation of public schools.

This Court's decisions have long recognized the evils of segregation and the benefits of integration. At the time of *Brown*, social science had amassed significant and persuasive evidence in support of this Court's decision. Since *Brown*, the evidence has grown even stronger. There is no

question that segregation debilitates minorities and whites, and that integration remains crucial to fostering and preserving bedrock aspects of equal opportunity as well as the democratic principles on which this country is built.

Accordingly, the foregoing truths give rise to certain fundamental principles that ought to guide this Court's decision in these cases:

1. Racial inequality is perpetuated by the interaction of numerous institutions, and does not require purposeful racism or malicious state action to continue. These dynamics, undisturbed, will persist because they operate in a vicious, reinforcing circle of causation.

2. The effort to achieve and preserve racial integration in public schools is a justifiable intervention into structural arrangements that perpetuate racial inequality.

3. Efforts by democratically elected school boards to eradicate segregation and achieve or preserve integration should be applauded rather than subjected to constitutional reproach. Rather than visiting a harm on any individual or group of students, school boards striving to promote integration seek to avert the damage done to all students by segregated institutions.

This Court should therefore affirm the decisions of the Courts of Appeals in these cases.

ARGUMENT

I. INTEGRATION IS NECESSARY TO BREAK DOWN RACIAL INEQUALITY, AND RACE-CONSCIOUS MEANS ARE NECESSARY TO ACHIEVE INTEGRATION.

A. This Court Has Held That Racially Segregated Schools Are Inherently Harmful.

It is simply bedrock law that separate is not equal in public education. In ringing language, Chief Justice Warren pronounced in *Brown v. Board of Educ.*, that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." 347 U.S. 483, 495 (1954). Significantly, as Chief

Justice Warren observed, although the pernicious impact of segregation is *greater* when legally compelled, segregation even without the sanction of law is harmful to school children and civic life generally. In *Brown* the Court quoted with approval the finding of the lower court: "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law." 347 U.S. at 494. The harm of segregation is greater with the sanction of law, but it is still destructive, even absent law's imprimatur.

This Court then observed: "Today, education is perhaps the most important function of state and local governments." *Id.* at 493. Elaborating on this the Court described several critical roles that education serves in our society. First, the Court specified that an adequate education forms the cornerstone for self-reliance in a market economy: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." Second, proper education plays an essential role in acculturating new citizens to the values and shared responsibilities of a democratic society: "It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." Finally, education prepares each child to contribute to the collective good of the country: "It is required in the performance of our most basic public responsibilities, even service in the armed forces." For all of these reasons, our society appropriately places an extraordinarily high value on integrated schooling. As Chief Justice Warren insisted in *Brown*, public education, "where the state has undertaken to provide it, is a right which must be made available to all on equal terms." 347 U.S. at 493.

Conversely, school segregation is malevolent and destructive of the life chances of children, their acculturation to democratic values, and their ability to develop into contributing members of society. Although this Court has limited the authority of the federal judiciary to remedy the

harm of segregation, this in no way undermines the finding in *Brown* that segregated schooling is inherently harmful. Moreover, as we discuss in Section II of this brief, since that decision the weight of authority has become even greater. Section II of this brief will also review modern social science on the causes and persistence of segregation and explain how the integration plans advanced by the Seattle and Jefferson County School Boards are designed to disrupt these dynamics. The present section, however, focuses first on the constitutionality of voluntary efforts by local governments and school districts to use limited race-conscious means in pursuing integration.

B. This Court's Decisions In *Brown I*, *Brown II* And Their Progeny Do Not Command An End To All Racial Classifications, But Instead Make Clear That Race-Conscious Means Are Essential To The Elimination of Segregation And The Integration Of Schools.

Petitioners and the Solicitor General ignore *Brown's* central finding that racial *segregation* is inherently harmful, and instead assert that this landmark case reduces to the proposition that racial *classification* is inherently harmful. To that end, the Government's lawyer argues that *Brown's* command reduces to one phrase, selectively culled from *Brown II*: "achiev[ing] a system of determining admission to the public schools on a nonracial basis." (Brief for the United States as *Amicus Curiae* Supporting Petitioner in No. 05-908, p. 6.).

While there is and will continue to be some contestation over the scope and implications of the *Brown I* and *II* decisions, it is clear that Petitioners and the Solicitor General argue for an interpretation that is far too narrow.[2]

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[2] The anti-classification principle is better seen as an outgrowth of the political struggles over *Brown's* implementation rather than the basis of the *Brown* decision itself. *See* Reva Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles Over Brown*, 117 Harv. L. Rev. 1470 (2004) for a richly nuanced account of the competing values that have shaped our equal protection tradition.

Tellingly, these very same characterizations of *Brown* were offered in the 1960s and early 1970s by recalcitrant local jurisdictions that similarly sought to undermine school integration. In response to these efforts, this Court made it clear that such an overly narrow and decontextualized reading of *Brown* is inappropriate. More specifically, this Court explicitly considered and rejected claims that the Constitution is colorblind in a manner that forbids school districts from adopting race-conscious strategies to achieve integration.

Beginning almost immediately in the wake of *Brown I*, various jurisdictions, not all of them southern, declared that the Constitution did not demand integration but only prohibited the use of racial classifications in student assignment policies. For instance, on remand from *Brown I*, the district court in *Briggs v. Elliott* declared that the Constitution "does not require integration. It merely forbids discrimination." 132 F. Supp. 776, 777 (E.D.S.C. 1955). From there, it was only a short step for courts to move from the claim that the Constitution did not mandate integration to the insistence that it affirmatively prohibited efforts to achieve integration through race-conscious means. *See, e.g., Randall v. Sumpter Sch. Dist. No. 2*, 241 F. Supp. 787, 789 (E.C.S.C. 1965) (holding that the Constitution is colorblind and should no more be violated to attempt integration than to preserve segregation); *Bradley v. Sch. Bd. of City of Richmond*, 345 F.2d 310, 316 (4th Cir. 1964), *vacated on other grounds*, 382 U.S. 103 (1965) and *Gilliam v. Sch. Bd. of Hopewell*, 345 F.2d 325, 327 (4th Cir. 1965), *vacated on other grounds*, 382 U.S. 103 (1965) (holding that permissive transfers of minorities granted because of their race are unlawful) *citing Goss v. Bd. of Educ. of City of Knoxville, Tennessee*, 373 U.S. 683, 687 (1963). According to these once formal segregationists turned devotees of colorblindness, the Constitution forbids any state use of race, whether to segregate or to integrate.

The effort to fashion a colorblind constraint on racial integration efforts was opposed by a number of lower courts and eventually resoundingly rejected by the Supreme Court. By responding in this manner, the lower courts and this Court recognized the essential importance of context in evaluating race-conscious educational policies. Race-conscious

school board policies designed to maintain segregation were constitutionally forbidden. Race-conscious school board policies designed to foster integration and promote educational equality were embraced and the school boards pursuing such policies were given deference and latitude. In *United States v. Jefferson County Bd. of Educ.*, Judge John Minor Wisdom of the Fifth Circuit offered the most comprehensive rebuttal of the effort to construe *Brown* as simply proscribing all race-conscious school policies:

> The Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate governmental purpose. 372 F.2d 836, 876 (5th Cir. 1966)

Wisdom recognized that the constitutional significance of colorblindness has to be measured in terms of the uses of race ostensibly proscribed. Where the goal is integration, color-conscious means are not only constitutional but necessary: "disestablishing segregation among students, distributing the better teachers equitably, equalizing facilities, selecting appropriate locations for schools, and avoiding resegregation *must necessarily be based on race.*" *Id.* at 877 (emphasis added). Other lower courts echoed this position on the necessity of race-conscious measures to achieving desegregation and integration. *See, e.g., Wanner v. County Sch. Bd. of Arlington County, Virginia*, 357 F.2d 452, 454-55 (4th Cir. 1966) ("It would be stultifying to hold that a board may not move to undo arrangements artificially contrived to effect or maintain segregation, on the ground that this interference with the status quo would involve 'consideration of race.'"); *Offermann v. Nitkowski*, 248 F. Supp. 129, 131 (W.D.N.Y. 1965) ("[T]he Fourteenth Amendment, while prohibiting any form of invidious discrimination, does not bar cognizance of race and a proper effort to eliminate racial imbalance in a school

system."); *Taylor v. Bd. of Educ. of City Sch. Dist. of the City of New Rochelle*, 191 F. Supp. 181, 196 (S.D.N.Y. 1961) ("The Constitution is not this colorblind.").

Consistent with these opinions of courts below, this Court expressly and repeatedly recognized that desegregation could not occur in the absence of race-conscious measures. In *North Carolina State Bd. of Educ. v. Swann*, this Court stated:

> Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems. 402 U.S. 43, 46 (1971)

In *McDaniel v. Barresi*, 402 U.S. 39, 41 (1971), parents of school children in Clarke County, Georgia challenged a desegregation program on the ground that the assignment of children based on race violated both the Equal Protection Clause of the Fourteenth Amendment and Title IV of the Civil Rights Act of 1964. This Court responded:

> We reject these contentions.
>
> The Clarke County Board of Education, as part of its affirmative duty to disestablish the dual school system, properly took into account the race of its elementary school children in drawing attendance lines. To have done otherwise would have severely hampered the board's ability to deal effectively with the task at hand. School boards that operated dual school systems are "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green v. County School Board*, 391 U.S. 430, 437-438, 88 S.Ct. 1689, 1694, 20 L.Ed.2d 716 (1968). In this remedial process, steps will

> almost invariably require that students be assigned "differently because of their race." . . . [Citations omitted.] Any other approach would freeze the status quo that is the very target of all desegregation processes. 402 U.S. at 41

See also, Green v. County Sch. Bd. of New Kent County, Virginia, 391 U.S. 430, 437 (1968).

Thus, this Court's decisions have previously dealt with and rejected the very argument petitioners and their *amici* raise here. *Brown* does not stand for the narrow proposition that race-conscious measures are forbidden in the assignment of students. It is not just that the petitioners and the Solicitor General misrepresent the holdings in *Brown I* and *Brown II* – they also ignore this Court's decisions since recognizing that school boards need to use limited race-conscious means if they are to achieve and preserve integration, and also specifically rejecting a colorblind restriction on such efforts.

C. This Court Has Recognized And Approved The Right And Power Of School Authorities Voluntarily To Desegregate Through Race-Conscious Measures Even In The Absence Of A *De Jure* Constitutional Violation.

Petitioners, the government, and their *amici* suggest that even if school boards are permitted to use limited race-conscious measures, such measures can only be used to remedy *de jure* segregation. To the contrary, this Court has repeatedly expressed approval of race-conscious voluntary school integration efforts at the K-12 level. Over 35 years ago, in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971), a unanimous Court clearly distinguished voluntary desegregation undertaken by duly constituted public officials from mandatory court-ordered desegregation. In doing so, the Court acknowledged that the powers and discretion afforded school officials are much greater than those of federal judges:

> Remedial judicial authority does not put judges automatically in the shoes of school authorities

> whose powers are plenary. Judicial authority enters only when local authority defaults.
>
> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; absent a finding of a constitutional violation, however, that would not be within the authority of a federal court. [401 U.S. at 16.]

The Court's remarks reflect the generally understood view that the Fourteenth Amendment is not considered by this Court to be a bar on voluntary efforts to desegregate.

The Court unanimously reiterated this position in *North Carolina State Bd. of Educ. v. Swann*:

> We observed in *Swann, supra,* 402 U.S., at 16, 91 S.Ct., at 1276, that school authorities have wide discretion in formulating school policy, and that as a matter of educational policy school authorities may well conclude that some kind of racial balance in the schools is desirable quite apart from any constitutional requirements. 402 U.S. 43, 45-46 (1971)

Thus, this Court has expressly recognized the right and power of school districts to do exactly what Seattle and Louisville have done here. Since *Swann*, members of this Court have indicated their view that this position remains firm. The same year that this Court decided *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978), then-Justice William Rehnquist rejected a request to enjoin a race-conscious desegregation plan ordered by the California Supreme Court for the city of Los Angeles. *Bustop v. Bd. of Educ. of the City of Los Angeles*, 439 U.S. 1380, 1382-83 (1978). In doing so, Justice Rehnquist

rejected the "novel" argument that parents and school children have a "federal right" to be free from race-conscious assignment plans not mandated by the Fourteenth Amendment to the United States Constitution. In doing so, Justice Rehnquist recognized that state actors have the authority to pursue race-conscious student assignment plans even in the absence of a Fourteenth Amendment violation:

> While I have the gravest doubts that the Supreme Court of California was *required* by the United States Constitution to take the action that it has taken in this case, I have very little doubt that it was *permitted* by that Constitution to take such action." [439 U.S. at 1382-83.]

Four years later, in *Washington v. Seattle Sch. Dist. No. 1,* 458 U.S. 457 (1982), this Court struck down a state referendum that effectively banned desegregative student busing. The referendum specifically targeted the Seattle School Board's voluntary race-conscious busing program. By invalidating this ban on voluntary busing aimed at *de facto* racial segregation, the Court reaffirmed the understanding that "in the absence of a constitutional violation, the desirability and efficacy of school desegregation are matters to be resolved through the political process." 458 U.S. at 472. With the recognition that the "educational decisionmaking process" was "firmly committed to the local board's discretion," this Court agreed with the courts below that the "initiative [impermissibly] removes from local school boards their existing authority, and in large part their capability, to enact programs designed to desegregate schools." 458 U.S. at 466.

Justice Powell, who authored the dissent in this matter, also acknowledged that school boards are empowered to pursue voluntarily race-conscious integration measures:

> As a former school board member for many years, I accept the privilege of a dissenting Justice to add a personal note. In my view, the local

> school board – responsible to the people of the district it serves – *is* the best qualified agency of a state government to make decisions affecting education within its district. As a policy matter, I would not favor reversal of the Seattle Board's decision to experiment with a reasonable mandatory busing program, despite my own doubts as to the educational or social merit of such a program. *Id.* at 501, ftnt. 17.

Notably, this decision was rendered four years after Justice Powell wrote the plurality opinion in *Bakke*. Whereas petitioners and the Solicitor General argue that the analytical framework for considering affirmative action programs ought to be applied to voluntary race-conscious school desegregation, Justice Powell tellingly declined to assert the same in *Washington*.

II. THE HARM, CAUSES, AND CONSEQUENCES OF SEGREGATION ARE KNOWABLE AND WITHIN THE COGNIZANCE OF LOCAL SCHOOL BOARDS TO ADDRESS.

A. Local School Boards May Intervene To Disrupt The Processes That Produce Segregation And Cumulative Racialized Disadvantage.

As every frustrated parent, teacher or principal (judge, doctor or social worker) knows, institutional opportunities and outcomes are shaped, often dramatically, by inputs beyond the control of particular institutional actors. So historical legacies, neighborhood dynamics, family resources, and government policies like *No Child Left Behind* do a great deal to shape educational outcomes, but schools exert little direct influence over any of them. Substantial research literature makes clear that in the case of pervasive racial segregation in the nation's K-12 schools the effects are especially harmful, both for students and for our society as a whole. But if school districts can do little unilaterally to shape most of the processes that feed segregation, they nonetheless ought to be able to

use the few, modest tools within their grasp to disrupt the dynamic of segregation before it reaches its predictable conclusion within the school themselves. The use of race as one element in student assignment plans is an indispensable means to that end. A great deal hinges on this Court's willingness to uphold its use.

School segregation is the result of a dynamic and cumulative process, not a static and episodic one. We cannot adequately understand the process, or the production of durable racial inequality, more generally, only by examining singular discriminatory episodes or by looking at the practices and procedures of a single institution. In confronting racial inequality we must similarly account for multiple, intersecting, and often mutually reinforcing advantages and disadvantages and develop corresponding response strategies.

At the group level, racial and ethnic minorities are trapped by cumulative disadvantages, much of it surely unintended but nonetheless predictable and knowable. For example, housing discrimination constrains many black and Hispanic youth to attend high-poverty schools.[3] Children in these schools are much less likely than their affluent peers to attend college, and more likely to drop out of school or complete their education in a correctional facility.[4] All three outcomes reduce the labor market options these young adults are likely to have, with grave implications for their chances to secure health and retirement benefits.[5] It follows that in order to fully understand

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[3] Lisa Robinson and Andrew Grant-Thomas, *Barriers to Housing – Race, Place and Home: A Civil Rights and Metropolitan Opportunity Agenda*, The Civil Rights Project at Harvard University, Cambridge, MA (September 2004), available online at http://www.civilrightsproject.harvard.edu/research/metro/barriers_housing.php.

[4] Johanna Wald and Daniel J. Losen, *Defining and redirecting a school-to-prison pipeline*, The Civil Rights Project at Harvard University, Cambridge, MA (2003), available online at http://www.civilrightsproject.harvard.edu/research/pipeline03/FramingPaper.pdf.

[5] Robert M. Hauser, Solon S. Simmons, and Devah Pager, "High School Dropout, Race-Ethnicity, and Social Background from the 1970s

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why so many elderly African Americans and Hispanics live at or below the poverty line, we not only must retrace their life-long relationship to the labor market, but also their relationship to the housing market, and to the educational and criminal justice systems.

The production of racial inequality is largely cumulative in three distinct but related respects, all of them readily apparent in the context of school segregation.[6] First, advantage and disadvantage have cross-generational causes and effects. Consider current racial gaps in wealth. In 2000, non-Hispanic white households enjoyed a median net worth of $79,400, *eight times* the net worth of Hispanic households and *ten times* the net worth of African American households.[7] Even at similar levels of income, huge gaps remain.[8] Most of the wealth gap owes to equally enormous racial differences in the intergenerational transfer of wealth, the roots of which we find mainly in historical public and private sector policies and practices that created wealth for whites and denied it to nonwhites.[9] For example, the key initiatives of the New Deal and Fair Deal era, including Social Security, Unemployment Insurance, and the G.I.

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to the 1990s," *Dropouts in America: Confronting the Graduation Rate Crisis*, Harvard Education Press, Cambridge, MA (2004) (Gary Orfield, Ed.).

[6] Rebecca M. Blank, "Tracing the Economic Impact of Cumulative Discrimination," *American Economic Review*, 95.2, 99-103 (2005).

[7] Shawna Orzechowski and Peter Sepiella, "Net Worth and Asset Ownership of Households: 1998 and 2000," *Current Population Reports*, 70-88 (U.S. Census Bureau: May 2003), available at http://www.census.gov/prod/2003pubs/p70-88.pdf.

[8] Thomas M. Shapiro, *The hidden cost of being African American: how wealth perpetuates inequality*, Oxford University Press, New York 47-56, 69 (2004).

[9] Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy in America*, University of California Press, Berkeley, CA (1999), and Thomas M. Shapiro, *The hidden cost of being African American: how wealth perpetuates inequality*, Oxford University Press, New York (2004).

Bill, all but excluded African Americans from their benefits.[10] As a result, African Americans whose parents came of age in the 1940s and 1950s will receive less than one-tenth the inheritance of their white peers.[11]

Racial inequality accumulates across social arenas as well. Outcomes in one domain, whether favorable or unfavorable, shape outcomes in other domains. For example, fifty years of research on "neighborhood effects" documents the ways that social opportunities and outcomes cluster spatially in an intricate, but nonetheless intelligible web of reciprocal causation.[12] Because public infrastructure and basic services like transportation, education, public safety, and recreation are funded largely by local tax revenues, residents in poor municipalities are taxed at higher rates than those in more affluent areas for similar services – or, they receive lesser services for the taxes they pay.[13] Childhood obesity rates escalate in low-income neighborhoods as fear of crime and the lack of playgrounds and parks in poor areas keeps children indoors.[14] Segregation and unequal access to health care mean that racial minorities receive less and worse health

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[10] Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America*, W.W. Norton & Co., New York (2005).

[11] Thomas M. Shapiro, *The hidden cost of being African American: how wealth perpetuates inequality*, Oxford University Press, New York, 69 (2004).

[12] Margery Austin Turner and Dolores Acevedo-Garcia. "Why Housing Mobility? The Research Evidence Today," *PRRAC Newsletter* (January/February 2005).

[13] Myron Orfield, *Metropolitics: a regional agenda for community and stability*, The Brookings Institute, Washington, D.C., and The Lincoln Institute of Land Policy, Cambridge, MA (1997 rev. ed. 1998).

[14] Press Release: "Obesity Still a Major Problem," U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics (April 14, 2006), available at http://www.cdc.gov/nchs/pressroom/06facts/obesity03_04.htm (refers to *Prevalence of Overweight Among Children and Adolescents*).

care than whites do, exacerbating health disparities.[15] Health difficulties in turn undermine student academic performance.[16] Employment, health, wealth, crime and safety, delinquency and risky behavior, educational achievement, recreation – neighborhood residence has implications for them all.

Finally, inequality also arises from interactions within a single social domain over time. Thus, a poor work history in one's young adult years will likely hamper one's ability to secure future employment, get promotions, and earn high wages.[17] A student judged precocious in elementary and middle school is more likely to be placed in college-prep classes in high school, making her a more appealing college admissions candidate.[18] Offers of admission with generous financial aid packages in turn will make it more likely that she attends college and graduates on time.[19]

We could add many other examples of cumulative causation across generations, across domains, and within domains, but none would be more compelling or more exemplary of the structural and institutional dynamics underlying persistent racial exclusion in the United States than the case of school segregation. More than five decades after *Brown* the nation's public schools remain extremely segregated by race and class, with most urban African American and many Hispanic students isolated

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[15] David R. Williams and Chiquita Collins, "Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health," 116 *Public Health Reports*, 404, 405 (Sept./Oct. 2001).

[16] Richard Rothstein, *Class and Schools: Using Social, Economic, and Educational Reform to Close the Black-White Achievement Gap*, Teachers College Press, New York (2004).

[17] William Julius Wilson, "When Work Disappears: The World of the New Urban Poor," Vintage Books, New York (1996).

[18] Jeannie Oakes, "Keeping Track: How schools structure inequality," Yale University Press, New Haven (1985).

[19] Alberto Cabrera and Stephen LaNasa, "On the Path to College: Three Critical Tasks Facing America's Disadvantaged," *Research in Higher Education*, 42(2), 119-141 (2001).

from real educational opportunity in poor school districts. Jefferson County's and Seattle's limited use of race-based student assignment plans reflects the school boards' appreciation of these dynamics and represent modest, efficient, and necessary efforts to address them.

B. The Harm, Causes, And Consequences Of Segregation Are Known And Specifiable.

A range of historical and contemporary policies, practices and collective decisions combine to create racial segregation in K-12 schools, constraining access to quality public education for many African American and Hispanic students. Because children typically attend schools close to home, the racial makeup of residential neighborhoods is the most important determinant of the racial composition of the schools within them. Levels of residential and school segregation from whites are very highly correlated for blacks, Hispanics, and Asian Americans.[20] As residential neighborhoods in the United States are substantially segregated by race, so too are schools to the extent that they employ localized attendance policies.[21] This pattern did not arise by accident or personal choice alone, but through government policies and private discrimination that has never been effectively disestablished.[22]

i. Historical Factors Producing Segregation.

The discriminatory housing policies and widespread practices that created and maintain segregation in both

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[20] Lisa Robinson and Andrew Grant-Thomas, *Barriers to Housing – Race, Place, and Home: A Civil Rights and Metropolitan Opportunity Agenda*, The Civil Rights Project at Harvard University, Cambridge, MA (September 2004), available online at http://www.civilrightsproject.harvard.edu/research/metro/barriers_housing.php.

[21] Nancy A. Denton and Douglass S. Massey, *American Apartheid: Segregation and the Making of the Underclass*, Harvard University Press, Cambridge, MA (1993).

[22] Sheryl Cashin, *The Failures of Integration*, Public Affairs (2004).

the North and South have been amply documented. The FHA and VA mortgage programs that allowed many Americans to buy their first homes served virtually only white applicants.[23] Private developers openly proclaimed that their new tract homes were to be sold to whites only.[24] Racial covenants, requiring white homeowners to sell their homes to whites, were commonly attached to deeds in the North and South.[25] Discrimination by realtors and lenders, including "block busting," hastened the rapid segregation of urban neighborhoods.[26]

Racially discriminatory public housing policies, urban renewal and slum clearance exacerbated patterns of racial concentration in cities.[27] By the 1950s, the racial character of the movement of people out of the cities and into the suburbs was well enough understood to be given the name "white flight."[28] Newly created and racially segregated white suburbs also benefited from local property tax policies. This funding formula created a significant funding gap between suburban and urban school districts during the 1950s, a gap that persists today.[29] The combination of racially discriminatory public policy and private discrimination

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[23] Richard Thompson Ford, "The Boundaries of Race: Political Geography in Legal Analysis," 107 *Harvard Law Review* 8 (1994); Kevin Fox Gotham, "Urban Space, Restrictive Covenants and the Origins of Racial Residential Segregation in a U.S. City, 1900-1950," *International Journal of Urban and Regional Research* 24.3 (2000).

[24] David L. Kirp, John P. Dwyer, and Larry A. Rosenthal, *Our Town: Race, Housing, and the Soul of Surburbia*, Rutgers University Press, New Brunswick, NJ (1995).

[25] Evan McKenzie, *Privatopia: Homeowner Associations, and the Rise of Residential Private Government*, Yale University Press, New Haven, CT (1996).

[26] John Yinger, "Housing Discrimination Is Still Worth Worrying About," *Housing Policy Debate*, 9, 893-927 (1998).

[27] Sheryl Cashin, *The Failures of Integration*, Public Affairs (2004).

[28] William Frey, "Central City White Flight: Racial and Nonracial Causes," *American Sociological Review*, 44, 452-448 (1979).

[29] Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States*, Oxford University Press, New York (1985).

produced entrenched patterns of residential segregation and resource disparities, laying the foundation for segregated and unequal school systems today.

ii. The Historical Legacy and Contemporary Factors Maintaining School Segregation.

For a time, the civil rights victories of the 1950s and 1960s and a more accepting turn in racial attitudes ushered promising trends in housing and school desegregation. The Fair Housing Act helped expand housing opportunities for African Americans. District-level school desegregation policies in the 1970s and 1980s, often court-mandated but sometimes voluntary, made a significant contribution towards remedying racial inequities in public education.[30] Unfortunately, new trends have undermined these gains over the last twenty years.[31] The historical patterns, many of which have a legacy of discriminatory policy, and new, facially race-neutral policies and practices now interact to reinforce segregation in our society and our classrooms. Today, in many cities, we must refer not simply to segregated schools, but to entire school districts mired in poverty, social isolation, and their ill effects.

Because we finance public education systems primarily through local taxes, schools reflect the widely differing economic and social circumstances of their neighborhoods.[32] Residential segregation itself affects employment opportunities, health care, and economic status in many

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[30] Amy Stuart Wells and Robert L. Crain, "Perpetuation Theory and the Long-Term Effects of School Desegregation," *Review of Educational Research*, 64:4, 531-555 (1994).

[31] Gary Orfield and Chungmei Lee, "Brown at 50: King's Dream or Plessy's Nightmare?" Harvard Civil Rights Project, Cambridge, MA (2004).

[32] Raquel Fernandez and Richard Rogerson, "Income Distribution, Communities, and Quality of Public Education," *The Quarterly Journal of Economics*, 111(1), 135-164 (1996).

ways.[33] For example, by shaping the range and quality of institutions to which we have access, neighborhoods also help determine the composition of our social networks. "It's not just what you know, it's also who you know," and most workers find their jobs through their informal networks.[34] Indeed, at least one in three job changers finds new work without conducting an active search. As one pair of network researchers puts it, "almost by definition job changes made without searching tend to be mediated by social networks."[35]

The segregative effects of new, facially race-neutral policies have been profound. Fragmented local governments and fragmented school districts in metropolitan areas enable municipalities to enact parochial policies, such as exclusionary zoning, that ensure residential segregation. For example, suburban housing and land use policies that promote larger lot development depress the growth of suburban rental housing, increase housing costs and limit the influx of African American and Latino households.[36] Federal and state subsidized housing also contribute to racial segregation, clustering subsidized housing in inner city communities of color.[37] In addition, housing discrimination by realtors, lenders and landlords

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[33] H.J. Holzer, "The spatial mismatch hypothesis: what has the evidence shown?" *Urban Studies*, 28, 118 (1991).

[34] James Elliot, "Social Isolation and Labor Market Insulation: Network and Neighborhood Effects on Less-Educated Urban Workers," *The Sociological Quarterly*, 40, 199-216 (1999).

[35] Peter Marsden and Elizabeth Gorman, "Social Networks, Job Changes and Recruitment," *Sourcebook on Labor Markets: Evolving Structures and Processes*, Plenum Press, New York (2001) (Ivar Berg and Arne L. Kalleberg, Eds.).

[36] Rolf Pendall, "Local Land Use Regulations and the Chain of Exclusion," *Journal of the American Planning Association*, 66, 125-142 (2000).

[37] Lance Freeman, "Siting Affordable Housing: Location and Neighborhood Trends of Low Income Housing Tax Credit Developments in the 1990's," Brookings Institute (2004), available online at http://www.brookings.edu/urban/publications/20040405_Freeman.htm.

remains prevalent.[38] Racial steering by realtors and predatory or discriminatory mortgage lending constrain housing opportunities, and therefore educational opportunities, for people of color.[39]

As a result of these trends a growing number of students of color attend schools that lack adequate resources and are segregated by both race (African American and Hispanic) and class (poor). The racial differences in circumstances are staggering and demand redress. Half of all African American students in the United States attend a central city school district, compared to only one in six White students.[40] At the national level, roughly two in three white or black students would have to transfer for metropolitan school districts to become fully integrated. While neighborhood segregation declined slightly during the 1990s, school segregation actually increased. Whereas the typical African American child attends a school in which seven in ten students are poor, the typical white student attends a school in which three in ten peers are poor.[41]

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[38] John Yinger, "Housing Discrimination Is Still Worth Worrying About," *Housing Policy Debate*, 9, 893-927 (1998).

[39] HUD Publications:"Discrimination in Metropolitan Housing Markets: National Results from Phase 1, Phase 2, and Phase 3 of the Housing Discrimination Study (HDS)" (June 2004).

[40] Christopher Swanson, "Who Graduates? Who Doesn't? A Statistical Portrait of Public High School Graduation, Class Of 2001," Education Policy Center, The Urban Institute (February 25, 2004), available online at http://www.urban.org/UploadedPDF/410934_WhoGraduates.pdf.

[41] John Logan, "Choosing Segregation: Racial Imbalance in American Public Schools, 1990-2000," Lewis Mumford Center for Comparative Urban and Regional Research (March 29, 2002), available online at http://mumford.albany.edu/census/SchoolPop/SPReport/page1.html.

iii. The Impact of Segregated Schools on Students of Color and Society.

Like segregation in housing, segregation in schools concentrates poverty for African Americans and Latinos. Both racial segregation and concentrated poverty in turn relate to school opportunities and achievement levels.[42] High-poverty schools are very likely to be poorly funded schools marked by large, sometimes overcrowded classes; weak curricula; insufficiently trained teachers and high teacher turnover; low standardized test scores; high grade retention and drop-out rates; and low rates of parental involvement.[43] Students in these schools manifest more health problems and express greater concern about their personal safety than do their peers in more affluent schools. They are less likely to be introduced to college "gateway" classes such as algebra and geometry by the eighth grade and are more likely to be tracked into lower level courses that do not prepare or qualify them for college.[44] The poverty of many Latino families, combined

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[42] Gary Orfield and Susan Eaton, "Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education," New Press, New York (1996) and "Quality Counts '98: The Urban Challenge," *Education Week*, 6 (January 8, 1998), Stephen Schellenberg, "Concentration of Poverty and Ongoing Need for Title I," *Hard Work for Good Schools: Facts Not Fads in Title I Reform.* Cambridge, MA. The Civil Rights Project, Harvard University, Cambridge, MA (1999) (Gary Orfield and Elizabeth DeBray, Eds.).

[43] See references above and Linda Darling-Hammond, "Recruiting Teachers for the 21st Century: The Foundation for Educational Equity," *Journal of Negro Education*, 68, 254, 279 (2000) and Eric A. Hanushek, *et al.*, "Do Higher Salaries Buy Better Teachers?" Paper Presented at the Annual Meeting of the American Economic Association (January 3-5, 1999) and Richard D. Kahlenberg, "Helping Children Move from Bad Schools to Good Ones," The Century Foundation (June 15, 2006).

[44] Rand Corporation Study as cited by R. Sanders and W. Holt, "Still separate and unequal: Public education more than 40 years after Brown," *In Motion Magazine* (October 20, 1997), available online at http://www.inmotionmagazine.com/forty.html; D. Y. Ford and J. J. Harris, III, "Perceptions and attitudes of Black students toward school, achievement and other educational variables," *Child Development*, 67, 1141-

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with their comparative unfamiliarity with college-going processes, means that the lack of information, guidance and other resources associated with high-poverty schools may be especially harmful for this group.[45]

Research has found that the poverty of a school, far more than the poverty status of individual students, determines educational outcomes, and that impoverished students do better when they live in middle-class neighborhoods and/or attend more affluent schools.[46] Conversely, a substantial body of research indicates that students educated in integrated environments fare better than their segregated peers.[47] Given the strong linkage between racial and economic segregation in public schools, it would be nearly impossible to support socioeconomic integration without also supporting racial integration.

1152 (1996). C. Adelman, *Answers in the tool box: Academic intensity, attendance patterns and bachelor's degree attainment*, U.S. Department of Education, Office of Educational Research, Washington, D.C. (1999), available online at www.ed.gov/pubs/Toolbox.

[45] L. G. Tornatzky, R. Cutler, and J. Lee, *College knowledge: What Latino parents need to know and why they don't know it*, Tomas Rivera Policy Institute, Claremont, CA (2002); P. Gándara, *Capturing Latino students in the academic pipeline*, California Policy Seminar Brief Series, 10(3), University of California Latino/Latina Policy Research Program, Berkeley, CA (1998).

[46] Stephen J. Schellenberg. "Concentration of Poverty and Ongoing Need for Title I," *Hard Work for Good Schools: Facts not Fads in Title I Reform*, The Civil Rights Project, Harvard University, Cambridge, MA 130, 137 (1999) (Gary Orfield and Elizabeth DeBray, Eds.).

[47] Claude S. Fischer *et al.*, *Inequality by Design: Cracking the Bell Curve Myth*, Princeton University Press, Princeton, N.J. 83-84 (1996), and Jomills H. Braddock, II and James M. McPartland, "How Minorities Continue to be Excluded from Equal Employment Opportunities: Research on Labor Market and Institutional Barriers," *Journal of Social Issues*, 43, 5-39 (1987), and Amy Stuart Wells and Robert L. Crain, "Perpetuation Theory and the Long-Term Effects of School Desegregation," *Review of Educational Research*, 64:4, 531-555 (1994), and Eric Camburn, *American Journal of Education*, 98:4 (August 1990).

Desegregated schooling also promotes intergenerational gains for racial minorities. One study concludes that "improving economic and educational opportunities for one generation of minority individuals raises the socioeconomic status of the next generation, so that those who follow are more apt to begin school at the same starting point as their non-minority classmates."[48] By offering low-income minority children access to more developed social networks than isolated and resource-poor institutions can typically provide,[49] desegregated settings can help minority students to develop a more robust set of personal educational and professional expectations than they otherwise might.[50]

In the United States, each successively higher education level is associated with greater earning power. Over the last 25 years the gaps in lifetime earnings between high school dropouts and graduates, and between high school and college graduates, have only widened.[51] Higher levels of educational attainment are associated with greater labor force participation rates and a lower probability of unemployment.[52] The gap in employment rates between college and high school graduates has grown

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[48] William T. Trent, "Outcomes of School Desegregation: Findings from Longitudinal Research," *Journal of Negro Education*, 66:255 (1997).

[49] Amy Stuart Wells, "The Consequence of School Desegregation: The Mismatch Between the Research and the Rationale," 28 Hastings Const. LQ 771, 786 (2001).

[50] Michael Kurlaender and John T. Yun, "Is Diversity a Compelling Educational Interest? Evidence from Metropolitan Louisville," The Civil Rights Project, Harvard University, Cambridge, MA (1999), summary available online at http://www.diversityweb.org/Digest/W01/louisville.html.

[51] J. C. Day and E.C. Newburger, "The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings," U.S. Census Bureau (July 2002), available online at http://www.census.gov/prod/2002pubs/p23-210.pdf.

[52] U.S. Census Bureau educational attainment and employment data from the 2004 Current Population Survey online at http://www.census.gov/population/socdemo/education/cps2004/tab05a-01.pdf.

steadily as well.[53] Research studies have also described a strong relationship between a person's education level and her health status: the lower the educational level achieved, the higher the mortality rate and rates of morbidity for diseases such as cancer and heart disease.[54]

Integrated schools also confer significant societal benefits. Diverse educational settings contribute to all students' ability to participate in a pluralistic society, an important goal in our diversifying society and global economy. Whites' proximity to blacks in schools, workplaces, and neighborhoods increases their chances of forming inter-racial friendships, and some recent work suggests that "students who attend more diverse schools have higher comfort levels with members of racial groups different than their own, an increased sense of civic engagement and a greater desire to live and work in multiracial settings relative to their more segregated peers."[55] White students in relatively integrated settings display greater tolerance of their black peers than do those in more segregated settings.

A growing body of work suggests that desegregated experiences during childhood equip people with the tools they will need to successfully negotiate a society and world becoming ever more multiracial, multiethnic, and multicultural. The educational inequities produced by segregation today threaten to deprive our nation of much of its next generation of economic, political and social leaders,

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[53] Joint Economic Committee Study: "Investment in Education: Private and Public Returns," United States Congress (January 2000), available online at http://www.house.gov/jec/educ.htm.

[54] Center for the Advancement of Health: "Life Lessons: Studying Education's Effect on Health," 7:12 (December 2002), available online at http://www.cfah.org/factsoflife/vol7no12.cfm.

[55] Gary Orfield and Chungmei Lee, "Brown at 50: King's Dream or Plessy's Nightmare?" Harvard Civil Rights Project, Cambridge, MA (2004).

and of informed citizens capable of holding those leaders accountable.

iv. School Segregation, Housing Segregation, and the Cycle of Disadvantage.

The issues of residential and school segregation are deeply entwined, both because perceptions of school quality so powerfully influence parents' residential choices, and because children typically attend schools close to home. Segregated housing patterns fuel segregated classrooms and disparate educational outcomes. In turn, low quality public schools reinforce segregated housing patterns due to the strong correlation between housing prices and public school quality.[56] The quality of education is the most important factor driving many White families out of urban school districts.[57] The result of these patterns is a downward spiral of continued White flight, flight of higher income families and racial and economic segregation in our urban school districts. In short, school segregation is both an important outcome and a crucial source of residential segregation.[58]

Unless pointed and deliberate steps are taken to disrupt it, the costly feedback loop generated by segregated schools and neighborhoods will only increase the

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[56] Sarah Max, "School, What Is It Good For? When it comes to home prices, school matters. Buyers will pay a premium to live near top schools," *CNN.com* (August 27, 2004), available online at http://money.cnn.com/2004/08/27/real_estate/buying_selling/schools/ and David Brasington and Donald R. Haurin, "Educational Outcomes and House Values: A Test of the Value Added Approach," *Journal of Regional Science*, 46, 245-268 (2006).

[57] Elena Irwin Bayoh and Timothy Haab, "Determinants of Residential Location Choice: How Important are Local Public Goods in Attracting Homeowners to Central City Locations?" *Journal of Regional Science*, 46:1, 97-120 (February 2006).

[58] Nancy Denton, "The Persistence of Segregation: Links Between Residential Segregation and School Segregation," *In Pursuit of a Dream Deferred. Linking Housing & Education Policy*, Peter Lang Publishing Inc., New York, NY, ch. 4 (2001).

social isolation suffered by many students of color. The societal implications of this are severe, with entire generations of young black and Hispanic Americans unprepared for the future. As noted by Dr. Gary Orfield of the Harvard Civil Rights Project:

> When an entire racial or ethnic group experiences consistently high dropout rates, these problems can deeply damage the community, its families, its social structure, and its institutions.[59]

The new racial re-segregation in education, and the vast inequities that flow from it, pose a direct challenge to the commitment to eradicating educational segregation and inequality articulated in *Brown*. In this case, two school districts have taken modest steps to address the problem. We know from many studies that integrated schools enhance educational opportunities for minority children and increase the quality of education for all students. When white children and children of color attend the same schools, everyone benefits. Our challenge is not simply to take the steps necessary to assure that all children have equal access to a high-quality education, but also to recognize the new dynamics of racial segregation today and move to permit competent, thoughtful intervention. School districts, concerned about squandering gains made during years in which their systems sought to maintain desegregated schools, are responding to troubling re-segregation trends with voluntary plans designed to alter the fundamental institutional dynamics of housing, transportation, zoning, and education in ways that account for specified, predictable, yet often unintentional institutional interactions. This Court should provide these districts leave to intervene in a process that, undisrupted, will continue to perpetuate racialized inequality to the detriment of our national fabric.

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[59] Gary Orfield, Ed., *Dropouts in America: Confronting the Graduation Rate Crisis*, Harvard Education Press, Cambridge, MA, 2 (2004).

C. Where Racial Harms Are Institutionally Produced, Democratically Elected And Locally Accountable School Districts Are The Most Appropriate Institutional Actor For Responding To School Segregation.

As this Court reiterated in *Grutter*, "[c]ontext matters when reviewing race-based governmental action under the Equal Protection Clause" because "[n]ot every decision influenced by race is equally objectionable." *Grutter v. Bollinger,* 539 U.S. 306, 327 (2003). Therefore, Courts must "carefully examin[e] the importance and the sincerity of the government's reasons for using race in a particular context." *Id.* The context here is that duly constituted local authorities, accountable to the citizenry, have voluntarily chosen to counteract segregation and ameliorate its pernicious effects by making student assignments based on race under strictly limited circumstances. As shown, *supra,* the pernicious effects of segregation and the beneficial effects of integration are beyond question, both as a matter of law and as a matter of social science.

In this context, the issue is not the power of a federal court to compel race-based action by a school district, but whether a federal court should interfere with and prevent a local authority from realizing the benefits of curtailing segregation and promoting integration. Although the intricate patterns of societal discrimination may be too amorphous a concept of injury for courts to manage, local government is certainly permitted to take cognizance of such injuries and respond with carefully measured actions.

Courts have long deferred to the professional judgment of local school districts to determine the educational policies that best suit the needs of the children within each school district. *See,* e.g., *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) ("[T]he education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local officials, and not of federal judges."); *Freeman v. Pitts*, 503 U.S. 467, 489 (1992); *Bd. of Educ. of Oklahoma City v. Dowell*, 498 U.S. 237, 248 (1991). In this

Court's estimation, local control encourages the responsiveness of local school boards to those whom they serve, *Freeman*, 503 U.S. at 490, community support for and confidence in the public school system, *Milliken v. Bradley*, 418 U.S. 717, 741-42 (1974), and "experimentation, innovation, and a healthy competition for educational excellence." *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 50 (1974). The policies of the Jefferson County Public Schools and the Seattle Public Schools are designed to serve these interests.

Over the past several decades, the Jefferson County Public School system has carefully refined its student assignment plan to meet both legal mandates and the needs and interests of its community. As a democratically-elected body, the Jefferson County Board of Education is accountable to its constituents and motivated to maintain their support. For this reason, it periodically commissions surveys of its students, graduates, parents, teachers, and other members of the community to determine their attitudes and preferences about the JCPS. The Jefferson County School board has further explained that integrated schools result in improved student education and community support for public schools because the plan has enabled the board to reach the difficult goal of maintaining a system of racially integrated schools in a county with a long history of segregation and a presently segregated housing market.

Similarly, the experience of the Seattle Public Schools reflects continued experimentation with voluntary racial integration plans. The Seattle Public Schools have a long history of voluntary efforts to integrate its schools. The assignment plan at issue is the latest, and most minimal, of these efforts. In contrast to earlier plans, the current plan does not mandate a particular racial balance or require assignment to a particular school because of race. In addition, the Plan was to be reviewed annually by the school board.

The moderateness of their efforts should not blind us to the importance of the work these school boards mean to do. Board members recognize that the structural dynamics

of segregation, rooted in our nation's history and fuelled by an interactive set of contemporary policies and practices, will not yield to wishful thinking. Nor will the myriad harms that segregation promotes. School boards alone cannot dismantle the machinery of segregation, but through the voluntary use of race-conscious measures they can mitigate its severity and the severity of its effects. Fifty years of robust case law, the national interest and the social and educational welfare of all our students demand that they be allowed to do so.

CONCLUSION

On the basis of the foregoing arguments and authorities, the Caucus for Structural Equity urges this Court to affirm the decisions of the lower courts.

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